(24,445)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 701.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, PLAINTIFF IN ERROR,

vs.

J. J. BYRNE AND DANIEL KALEIKI.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

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1 R. Miyata.
Z. Sugihara, Proprietor & Manager.
411 N. King Street near Beretania.
Telephone 1594.

To. R. Miyata & Company, Dr.,

General Contractors, Builders, Painters, and Paper-hangers; Plumbing, also Water-piping; Second-hand Lumber Bought and Sold; also Furniture and Hardware.

HONOLULU, T. H., ——— —, 191–.

Sold to Daniel Kaleiki.

1912.			
Sept. 19.	6′ x 10′ House & plumbing work.....	130.00	130.00
	2 pcs. 2 x 3 x 10.....	.32	
	50 Ft. 1 x 8 pl.	1.15	
	2 pcs. 1¼ x 12 x 20 pl.....	1.12	
	1 " " 22 "	1.24	
	1 day Carpenter's labor Terakawa.....	2.50	
	1 " " " Kakumaru	2.00	8.33
	2 Lbs. 6d Nail-.....	.10	.10
20.	½ day Carpenter's labor Terakawa....	1.25	
	½ " " " Kakumaru ...	1.00	2.25
21.	20 pcs. 1 x 3 x 12	1.95	
	2 " 2 x 3 x 20	.65	2.60
Oct. 16.	Sewer rate.....	.75	.75
1913.			
May 22.	3 Prs. 10 x 12 Bracket-.....	.90	
	1 Only 5″ Screw driver	.25	1.15
			145.18
Nov. 1, 1912.	By cash for sewer rate.....	.75	
Dec. 16, "	" "	10.00	
Jan. 17, 1913.	" "	15.00	
Apr. 18, "	" "	10.00	
May 15, "	" "	10.30	
Sept. 17, "	" "	10.00	
Nov. 20, "	" "	10.00	
		66.05	66.05
Balance			$79.13

(Endorsement on the Back:) 15-28 P′. J. J. Byrne, vs. Dan Kaleiki. Plaintiff's Exhibit "A." D. K. Kaeo, Clerk. District Court of Honolulu [County of Oahu],* Mar. 27, 1914.

[*Words enclosed in brackets erased in copy.]

2 This is to certify that the foregoing is a full, true and correct copy of the original statement of account filed in the District Court of Honolulu, City and County of Honolulu, Territory of Hawaii, in the above entitled cause.

J. M. MONSARRAT,
District Magistrate of Honolulu, City and County of Honolulu, Territory of Hawaii.

3 Know all men by these presents, That R. Miyata and Z. Sugihara copartners doing business as Miyata & Company, assignor, in consideration of One Dollar and other valuable consideration to it paid and moving by and from J. J. Byrne, assignee, of Honolulu, does hereby sell, assign, transfer and set over unto said J. J. Byrne their certain claim and demand against Daniel Kaleiki of Honolulu, City and County of Honolulu, Territory of Hawaii, of the sum of seventy-nine 13/100 Dollars on account of certain goods, wares and merchandise sold and delivered by said assignor to said Daniel Kaleiki as per account standing on the books of said assignor at this date.

In witness whereof, said assignor has hereunto set his hand and seal the 17th day of March, A. D. 1914.

宮田理助 . . . . . [SEAL.]

杉原義治 . . . . . [SEAL.]

(Endorsement on the back:) 15-28 P2. J. J. Byrne vs. Dan Kaleiki. Plaintiff's Exhibit B. D. K. Kaeo, Clerk. District Court of Honolulu [County of Oahu],* Mar. 27, 1914.

This is to certify that the above is a full, true and correct copy of the Original Assignment filed in the District Court of Honolulu, City and County of Honolulu, Territory of Hawaii, in the above entitled cause.

J. M. MONSARRAT,
District Magistrate of Honolulu, City ond County of Honolulu, Territory of Hawaii.

[*Words enclosed in brackets erased in copy.]

4 In the District Court of Honolulu, City and County of Honolulu, Territory of Hawaii.

J. J. BYRNE, Plaintiff,
vs.
DANIEL KALEIKI, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Corporation, Garnishee.

Assumpsit.

Declaration.

To the District Magistrate of Honolulu, City and County of Honolulu, Territory of Hawaii:

Plaintiff above named complains of defendant above named and *doe* cause of action alleges:

That Plaintiff and defendant are both residents of Honolulu, City and County of Honolulu, Territory of Hawaii, and Inter-Island Steam Navigation Co., Ltd. is an Hawaiian corporation duly organized and existing under and by virtue of the laws of the Territory of Hawaii.

That heretofore, to wit, on various dates on or before the 30th day of June, A. D. 1913, R. Miyata and Z. Sugihara, copartners doing business as R. Miyata & Company did deliver to the defendant certain goods, wares and merchandise and did perform certain work and labor for the said defendant at his, said defendant's special instance and request.

That the reasonable value of the said goods, wares and merchandise so delivered and the work and labor so done and performed, remaining unpaid is of the amount of $79.13.

That thereafter the said R. Miyata and Z. Sugihara, copartners doing business as aforesaid, duly assigned their claim and demand in writing to the plaintiff herein for valuable consideration, and the said plaintiff is now the owner and holder of the same.

That repeated demand has been made upon the defendant herein for the payment of the said sum of $79.13, but that notwithstanding the repeated demands so made, the defendant has hitherto refused and neglected to pay the same and still so refuses and neglects to pay said sum of $79.13, to the damage of the plaintiff herein.

Plaintiff alleges that the Inter-Island Steam Navigation Company, Limited, garnishee above named is the attorney, agent, trustee, factor or debtor of the defendant herein and as such has goods, wares, and merchandise or money in its hands belonging to the said defendant.

5 Wherefore plaintiff prays judgment against defendant in the sum of $79.13 together with costs, interest and attorney's commissions.

Plaintiff asks that process of this Court do issue citing defendant to appear and answer this demand.

J. J. BYRNE, *Plaintiff*,
By THOMPSON, WILDER, WATSON & LYMER,
His Attorneys.
B. S. U.

Dated Honolulu, March 18th, 1914.

This is to certify that the above is a full, true and correct copy of the Original Declaration of File in the District Court of Honolulu, City and County of Honolulu, Territory of Hawaii, as had in the above entitled cause.

J. M. MONSARRAT,
District Magistrate of Honolulu.

6 District Court of Honolulu, City and County of Honolulu, Territory of Hawaii.

J. J. BYRNE, Plaintiff,
vs.
DANIEL KALEIKI, Defendant; INTER ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Corporation, Garnishee.

Garnishee Summons.

The Territory of Hawaii to the High Sheriff of the Territory of Hawaii or his Deputy; the Sheriff of the City and County of Honolulu, his Deputy, or any Police Officer of the District of Honolulu, City and County of Honolulu, Territory of Hawaii:

You are commanded to summon Daniel Kaleiki Defendant if he can be found in this District, to appear before me at my Court Room, in Honolulu on Wednesday, the 25th day of March 1914, at 1:30 o'clock P. M. to show cause why judgment should not be rendered upon the Plaintiff'- demand in the above entitled suit, to-wit: As per declaration hereto attached and made a part hereof.

Wherefore Plaintiff pray- judgment for said amount of $79.13 with costs interests and attorneys' commissions.

Notify said defendant that if he fails to attend at the above named time and place, judgment will be entered against him ex parte, by default.

Plaintiff requests the Court issuing the summons to insert herein a direction to the officer serving the same to leave a true and attested copy thereof with Inter-Island Steam Navigation Company Limited Garnishee, who is the attorney, agent, factor, trustee, or debtor of said defendant, or at its usual place of abode, and to summon said Garnishee, to appear personally at the time and place above named then and there on oath to disclose whether it have, or at the time said copy was served, had any of the goods or effects of said defendant in

its hands, and if so, the nature, amount and value of the same, or whether said Garnishee is or was indebted to said defendant and the nature and amount of said debt.

You are therefore commanded to leave a true and attested copy thereof with said Garnishee and to summon it to appear personally at said time and place for the purposes above set forth.

Given under my hand this 18th day of March 1914.

J. M. MONSARRAT,
District Magistrate of Honolulu, City and County of Honolulu, Territory of Hawaii.

Whensoever any person summoned as an attorney, agent, factor or debtor of any defendant, may be desirous of so doing, he may apply to the Magistrate or any Judge of the Court from whom or which the said summons may have issued, and the Magistrate or Judge having caused reasonable notice to be given to the plaintiff in the action, shall proceed to take the deposition of the person thus summoned, and make such order as may be proper in the premises, at any time previous to the day appointed for hearing the cause, and the person so summoned as agent, factor, trustee or debtor of the party defendant, shall be taken to have obeyed the summons.—Sec. 2122 Rev. Laws.

[On left margin:] I certify the within Summons to be a true copy of the original on file in said Court.

[Endorsed:] 15/28. District Court of Honolulu, City and County of Honolulu, Territory of Hawaii. J. J. Byrne, Plaintiff, vs. Daniel Kaleiki, Defendant; I. I. S. Nav. Co., Ltd., Garnishee. Deposit. A. St. C. Pianaia, Clerk. Garnishee Summons. Issued at 2:10 o'clock P. M. M'ch 18, 1914. Returned at — o'clock — M. ——, 191–. Thompson, Wilder, Watson & Lymer, 3-11 Campbell Block, Honolulu, Attorneys for Plaintiff.

This is to certify that the above is a full, true and correct copy of the Original Summons file- in the District Court of Honolulu, City and County of Honolulu, Territory of Hawaii, in the above entitled cause.

J. M. MONSARRAT,
District Magistrate of Honolulu, City and County of Honolulu, Territory of Hawaii.

7 TERRITORY OF HAWAII,
City and County of Honolulu, ss:

I, William Henry, High Sheriff of the Territory of Hawaii do hereby certify and make return that I have served the within Summons and Declaration as follows:

On Daniel Kaleiki, therein named as defendant, at Honolulu, City and County of Honolulu, Territory of Hawaii this 20th day of March, A. D. 1914, by delivering to him a certified copy thereof and

of the Declaration annexed hereto and at the same time showing him the original as herein directed.

Dated Honolulu, City and County of Honolulu, Territory of Hawaii this 20th day of March, A. D. 1914.

WM. HENRY,
High Sheriff, Territory of Hawaii.

TERRITORY OF HAWAII,
City and County of Honolulu, ss:

I, William Henry, High Sheriff of the Territory of Hawaii, do hereby certify and make return that I served the within Summons and Declaration as follows:—

On the Inter-Island Steam Navigation Company, Limited, a corporation, therein named as Garnishee, through its Treasurer Norman E. Gedge, who accepted service for the said Inter-Island Steam Navigation Company, Limited, a corporation, at Honolulu, City and County of Honolulu, Territory of Hawaii this 19th day of March, A. D. 1914, by delivering to him a certified copy hereof and of the Declaration annexed hereto and at the same time showing him the original as herein directed.

Dated Honolulu, City and County of Honolulu, Territory of Hawaii this 19th day of March, A. D. 1914.

WM. HENRY,
High Sheriff, Territory of Hawaii.

This is to certify that the above are full, true and correct copies of the Original returns made by Wm. Henry, High Sheriff of the Territory of Hawaii, on Daniel Kaleiki, Defendant, and the Inter-Island Steam Navigation Company, Limited, Garnishee, as filed in the District Court of Honolulu, City and County of Honolulu.

J. M. MONSARRAT,
District Magistrate of Honolulu, City and County of Honolulu, Territory of Hawaii.

8 District Court of Honolulu, City and County of Honolulu, Territory of Hawaii.

J. J. BYRNE, Plaintiff,
vs.
DANIEL KALEIKI, Defendant; INTER-ISLAND STEAM NAVIGATION CO., LTD., Garn.

Assumpsit.

Costs: $1.00

WEDNESDAY, March 25, 1914.

B. S. Ulrich for Plaintiff.
Defendant defaulted.
E. W. Sutton appeared in behalf of the garnishee, and discloses as

follows: That the defendant is a second mate on the steamer "Claudine," hired directly by the Inter-Island S. Nav. Co., and not through a shipping commissioner, and at the time of service of process, it has 3½ days' pay due to defendant, and received a salary of $92.00 a month, and is still in its employ. That said steamer "Claudine" is used by the Garnishee in the inter-island coast trade from one island to another.

Garnishee, by counsel, asks to be discharged under the provisions of Section 4536 of the United States Revised Statutes.

Request was not granted, and the Court orders the Garnishee to retain 25% of defendant's salary or wages, and also 25% of all future salaries or wages until further order of the Court.

Continued to March 27, 1914, for proof.

FRIDAY, March 27, 1914.

B. S. Ulrich for Plaintiff.

For Proof.

S. KUROTO, sworn: I am connected with form of R. Miyamoto, a copartnership. Am the book-keeper, and as such I am familiar with books and accounts. Our books show we sold certain goods to defendant and performed certain services for him, in the sum of $145.18, and on which he paid $66.05 on account, leaving a balance of $79.13. That bill is a correct statement of the accounts in our books. Balance of $79.13 is correct. (Statement of accounts was offered and received in evidence as "Plaintiff's Exhibit A.")

Yes, demand for payment of $79.13 was made several times. I recognize that paper. That's the signature of R. Miyata, and Z. Sugihara for R. Miyata & Co. (Assignment was offered and received in evidence "Plaintiff's Exhibi- B.")

The Court gave judgment for Plaintiff against Defendant by default, in the amount claimed	$79.13
Together with Interest	2.23
Attorneys' commissions	8.13
Costs of Court	2.55
	$92.04

9 The Garnishee is hereby ordered to withhold and pay to plaintiff, or his attorneys 25% of all moneys, salary or wages, belonging to defendant herein at the time of service of process, and also 25% of any further salary or wages that may hereafter become due to said defendant until the judgment herein is fully paid, or until further order of this court.

This is to certify that the foregoing is a full, true and correct copy of the Minutes had and Judgment given in the above entitled cause.

J. M. MONSARRAT,
District Magistrate of Honolulu, City and County of Honolulu, Territory of Hawaii.

10 In the District Court of Honolulu, City and County of Honolulu, Territory of Hawaii.

J. J. BYRNE, Plaintiff,
vs.
DANIEL KALEIKI, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Corporation, Garnishee.

Stamp $1.00.

Bond on Appeal.

Know all men by these presents:

That we, Inter-Island Steam Navigation Company, Limited, a Hawaiian corporation, as principal, and N. E. Gedge, of Honolulu, City and County of Honolulu, Territory of Hawaii, as surety, are held and firmly bound unto J. A. Thompson, Clerk of the Supreme Court of the Territory of Hawaii and his successors in office in the penal sum of $20.00, for the payment of which well and truly to be made unto the said J. A. Thompson, as such Clerk, and -or his successors in office, we do hereby bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas heretofore and on to-wit: the 25th day of March, A. D. 1914, the District Magistrate of Honolulu, City and County of Honolulu, did render a judgment in the above entitled action ordering the garnishee above named to retain 25% of the defendant's salary or wages due at the time of service of process and also 25% of all future salary or wages due said defendant until the further order of the Court, and on March 27th, 1914, the above entitled action having been tried and judgment rendered in favor of plaintiff and against defendant in the total sum of $92.04, did order the garnishee to withhold
11 and pay to plaintiff or his attorney 25% of all moneys, salary or wages belonging to defendant herein at the time of service of process, and also 25% of any further salary or wages that may hereafter become due to said defendant until the judgment in said action should be fully paid; and whereas thereafter and on to-wit: the 30th day of March, A. D. 1914, the garnishee above named did file with said Magistrate its notice of appeal and did appeal from said judgment and order directed to it, the said garnishee, to the Supreme Court of the Territory of Hawaii upon questions of law; and whereas said garnishee has within the time required by law paid the costs accrued in said cause before said Magistrate and paid the costs of appeal:

Now, therefore, in case the above bounden principal shall pay all further costs to accrue in case the garnishee is defeated upon its said appeal to said Supreme Court of the Territory of Hawaii, then this obligation shall be null and void, otherwise to remain in full force and effect.

In witness whereof the above bounden principal and surety have caused these presents to be executed this — day of April, A. D. 1914.

INTER-ISLAND STEAM NAVIGATION COMPANY, LTD.,
By NORMAN E. GEDGE, *Treasurer.*
NORMAN E. GEDGE.

Approved as to form and sufficiency.
J. M. MØNSARRAT,
District Magistrate of Honolulu.

Endorsed: 15-28. Received and Filed April 3rd, A. D. 1914, at 2:30 P. M. N. Fernandez, Clerk, District Court.

12 In the District Court of Honolulu, City and County of Honolulu, Territory of Hawaii.

J. J. BYRNE, Plaintiff,
vs.
DANIEL KALEIKI, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Corporation, Garnishee.

Appeal to Supreme Court on Questions of Law.

Comes now Inter-Island Steam Navigation Company, Limited, a corporation, the garnishee named in the above entitled action, and hereby appeals from the judgment and orders rendered herein by the District Magistrate of said Court to the Supreme Court of the Territory of Hawaii on the following questions of law:

That said District Magistrate erred in holding that the salary or wages due the defendant from the garnishee for services as second mate of the S. S. "Claudine", a vessel solely engaged in traffic between ports in the Hawaiian Islands, Territory of Hawaii, were subject to garnishment;

That said District Magistrate erred in holding that Section 4536 of the Revised Statutes of the United States did not apply to the salary or wages due to the defendant from the garnishee for services as second mate of said S. S. "Claudine" for the reason that said S. S. "Claudine" was a steam vessel engaged in the coastwise trade, and for the reason that said defendant was not shipped as such second mate before a Shipping Commissioner of the United States.

Honolulu, March 30th, 1914.

INTER-ISLAND STEAM NAVIGATION COMPANY, LTD.,
By SMITH, WARREN, HEMENWAY & SUTTON,
Its Attorneys.

13 In the District Court of Honolulu, City and County of Honolulu, Territory of Hawaii.

J. J. BYRNE, Plaintiff,
vs.
DANIEL KALEIKI, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Corporation, Garnishee.

Certificate on Appeal.

I, J. M. Monsarrat, District Magistrate of the above named Court, hereby certify:

That in the above entitled action the garnishee above named, having on March 25th, 1914, disclosed that the defendant was in its employ as second mate of the S. S. "Claudine", a steam vessel engaged solely in trade between ports in the Islands of the Territory of Hawaii, at a monthly salary or wage of $92, and that said defendant was employed by it directly and not shipped before a Shipping Commissioner of the United States, claimed that the salary or wages of said defendant were not subject to attachment or garnishment because of the provision made in Section 4536 of the Revised Statutes of the United States, and moved that it be discharged as such garnishee;

That in view of the decision of the Supreme Court of Hawaii in the case of Schnack vs. Clark I overruled said contention that the salary or wages of the defendant were not subject to attachment or garnishment, denied the motion of the garnishee that it be discharged and ordered said garnishee to retain 25% of the defendant's salary or wages due at the time of service of process, and also 25% of all future salary or wages due said defendant until the further order of the Court;

That thereafter on the 27th day of March, 1914, said action having come on for trial and having been tried, I rendered judgment in favor of the plaintiff and against the defendant above named in the total sum of $92.04, and also made the following order in said action:

The garnishee is hereby ordered to withhold and pay to plaintiff, or his attorney, 25% of all moneys, salary or wages belonging to defendant herein at the time of service of process, and also 25% of any further salary or wages that may hereafter become due to said defendant until the judgment herein is fully paid or until further order of this Court.

14 That thereafter on the 30th day of March, 1914, said garnishee appealed from said judgment and orders to the Supreme Court of the Territory of Hawaii upon the following questions of law which were raised and passed on by me in said action, to-wit:

Whether the salary or wages of a seaman engaged solely in the coasrwise trade between ports in the Hawaiian Islands in the Territory of Hawaii, and who was not shipped before a Shipping Commis-

sioner of the United States, could be attached or garnisheed in view of the provisions made by Section 4536 of the Revised Statutes of the United States.

I further certify that said appeal has been duly perfected.

A full and correct copy of my record in said case is hereby attached and made a part hereof.

Given under my hand this 6th day of April, 1914.

J. M. MONSARRAT,
District Magistrate of Honolulu, City and County of Honolulu, Territory of Hawaii.

Appeal filed Mar. 30" A. D. 1914, at 2:15 P. M.

N. FERNANDEZ,
Clerk District Court of Honolulu.

Memorandum of Costs.

Costs of Court, paid by Garnishee	$3.55
Notice and Certificate of Appeal	1.10
Original Deposit by Plaintiff	4.00
Total sent up herewith	$8.65

Appeal Perfected Apr. 6" A. D. 1914, at 2 P. M.

N. FERNANDEZ,
Clerk District Court of Honolulu.

Endorsed: 15-28. In the Supreme Courtof the Territory of Hawaii. J. J. Byrne, Plaintiff, vs. Daniel Kaleiki, Defendant. Inter-Island Steam Navigation Company, Limited, a corporation, Garnishee. Notice of Appeal and Appeal to Supreme Court on Questions of Law, Certificate and Record from District Magistrate of Honolulu, City and County of Honolulu. Received: $8.65. No. 775. Filed at 2:35 o'clock P. M. May 1, 1914. Robert Parker, Jr., Assistant Clerk. Smith, Warren & Hemenway, Judd Building, Attorneys for Garnishee.

15 In the Supreme Court of the Territory of Hawaii, October Term, 1913.

J. J. BYRNE
vs.
DANIEL KALEIKI, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee.

Appeal from District Magistrate of Honolulu.

Submitted June 1, 1914. Decided June 9, 1914.

Robertson, C. J.; Watson and Quarles, JJ.

Garnishment—seaman's wages.

The wages of a seaman who has not shipped through a shipping commissioner, but directly employed by the owner of a vessel engaged in the merchant trade between ports in this territory, are subject to garnishment. Affirming Schnack v. Clark, 21 Haw. 661.

16 *Opinion of the Court by Quarles, J.*

The appellant, the Inter-Island Steam Navigation Company, Limited, was served with garnishee summons in the district court of Honolulu, as provided by the statute of this Territory, appeared as such garnishee, and answered as follows: "That the defendant is a second mate on the steamer 'Claudine,' hired directly by the Inter-Island S. Nav. Co., and not through a shipping commissioner, and at the time of service of process, it has 3½ days' pay due to defendant, and receives a salary of $92.00 a month, and is still in its employ. That said steamer 'Claudine' is used by the garnishee in the inter-island coast trade from one island to another." It moved that it be discharged as such garnishee on the ground that the wages of the defendant, as a seaman, are not subject to attachment or garnishment under the provisions of section 4536 Revised Statutes of the United States. This motion was denied, and the defendant having defaulted, judgment was entered against the defendant, and against the garnishee, in favor of the plaintiff for the sum of the debt and costs, amounting in all to the sum of $92.04, and the garnishee, appellant, was ordered to withhold from the defendant and pay to the plaintiff twenty-five per centum of the wages due to defendant at the time of service of such garnishee summons, and thereafter accruing, until the said judgment should be satisfied. From the judgment so entered the garnishee has appealed directly to this court upon the point of law, whether or not the wages of the defendant, as a seaman, are exempt from attachment or garnishment under the provisions of section 4536 Revised Statutes of the United States. The garnishment process shown by the record is authorized under the statutes of this Territory, and the appeal herein is in all things

regular, and vests jurisdiction in this court. The judg-
17 ment must be affirmed, unless the contention of the garnishee that the wages of the defendant are exempt from attachment or garnishment by reason of said statute, is correct.

In the case of Schnack v. Clark, 21 Haw. 661, this court, recently, after full and careful consideration, passed upon this question in a similar case, and held that the wages of seamen engaged in the coastwise trade, when employed by the master or owner of the vessel, and not through a shipping commissioner, are not exempt from attachment or garnishment by a creditor. After further consideration we see no reason for coming to a different conclusion, and reaffirm the decision in Schnack v. Clark, supra. The several acts of Congress relating to the subject-matter, and the authorities deciding this question, both in the affirmative and in the negative, were so fully considered and discussed by this court in Schnack v. Clark, supra, that no useful purpose would be subserved by again considering and discussing them here. With a few additional suggestions we will base our decision in this case upon the authority of the decision in Schnack v. Clark, supra.

A diversity of opinion has been expressed as to whether the original shipping commissioners' act of June 7, 1892 (17 Stat. L. 262), affected seamen engaged upon vessels in the coastwise trade, or if so, whether or not the act of Congress of June 9, 1874 (18 Stat. L. 64), repealed the original act in so far as seamen engaged upon vessels in the coastwise trade, other than between Atlantic and Pacific coast ports, are concerned. The Supreme Court of the United States in United States v. The Grace Lothrop, 95 U. S. 527, 532, held that the original act of June 7, 1872, did not apply to vessels engaged in the coastwise trade except between Atlantic and Pacific coast ports, but said that if there was any doubt on that point that it had been removed by the amendatory act
18 of June 9, 1874, wherein it was provided that none of the provisions of the original act should apply to vessels engaged in the coastwise trade except between the Atlantic and Pacific coasts. This ruling was followed in United States v. Smith, 95 U. S. 536. The apparent object of the act of June 9, 1874, giving to the language thereof its usual signification, is to take out of the operation of the act of June 7, 1872 (the shipping commissioners' act, within which is included section 4536 Rev. Stat. of the United States), vessels engaged in the coastwise trade other than those engaged in trade between the Atlantic and Pacific coasts, if the same were included at all in the original act. Such was the conclusion of the court in the two cases last cited, and this conclusion is manifestly correct. In Wilder v. Inter-Island Steam Navigation Co., 211 U. S. 239, this question was mentioned as not having been argued, or presented by the assignment of errors, and, therefore, not decided, the court treating the shipping commissioners' act in a general way, and not interpreting that portion of it found in section 4536 Revised Statutes of the United States with reference to subsequent amendatory acts.

Following the legislation by Congress affecting the matter down

to the present time we find no act which repeals the act of June 9, 1874, or which expressly, or by intendment, makes the provisions of the original act extend to vessels engaged in coastwise trade other than between Atlantic and Pacific coast ports in so far as the question before us is concerned. The act of June 26, 1884 (23 Stat. L. 53, 60), appears from the title and from the body of the act to apply only to vessels engaged in the foreign carrying trade (trade between Atlantic and Pacific coast ports being treated as foreign), with the exception of those engaged in trade "between the United States and the Dominion of Canada, Newfoundland, the Bermuda Islands, the Bahama Islands, the West Indies, Mexico and Central America." That act does not mention vessels engaged in the coastwise trade other than between the Atlantic and Pacific coasts, nor in terms refer to the amendatory act of June 9, 1874, or refer at all to section 4536 Revised Statutes. The act of June 19, 1886, section 2 (24 Stat. L. 79, 80), authorizes the shipment and discharge of crews on vessels engaged in the coastwise trade, etc., "at the request of the master or owner of such vessel", the fees to be half of the usual fees. This provision is permissive only, and we do not see how it affects the question at issue here, where the defendant seaman was not employed through a shipping commissioner, but directly by the owner of the vessel. The last act named was further amended by act of August 19, 1890 (26 Stat. L. 320), so as to make vessels engaged in the coastwise trade, etc., that ship crews through a shipping commissioner, subject to twenty of the sections of the original act incorporated into Title LIII, Revised Statutes of the United States, but did not mention section 4536 included therein. Said act was further amended by act of February 18, 1895 (28 Stat. L. 667), extending the provisions of section 4536 and other sections in said Title LIII, Revised Statutes to vessels engaged in coastwise trade whose crews should be "shipped through a shipping commissioner". This last amendatory act was further amended by act of March 2, 1897 (29 Stat. L. 687, 689), but in no way affecting the question before us. The original act under consideration was again amended by act of December 21, 1898 (30 Stat. L. 755, 764), but only by the fourth and fifth sections, the fourth amending section 4529 Revised Statutes so that a seaman must be paid his wages within two days after the termination of the agreement under which he shipped or when he is discharged, unless he shares in the profits of the cruise or voyage; while the fifth section amends section 4530 Revised Statutes so as to require the payment to every seaman of "one-half part of the wages which shall be due him at every port where such vessel, after the voyage has commenced, shall load or deliver cargo before the voyage is ended unless the contrary be expressly stipulated in the contract; and when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him as provided in section forty-five hundred and twenty-nine of the Revised Statutes." In passing this amendment Congress evidently had under consideration the prior amendatory acts under

which seamen engaged upon vessels in the coastwise trade were excluded from the provisions of the shipping commissioners' act except in cases where they shipped through a shipping commissioner, hence, did not intend that the last amendment should affect seamen engaged on vessels in the coastwise trade upon either one of our coasts who do not ship, or have not shipped, through a shipping commissioner. Another matter to be considered is that the defendant seaman was employed under a contract which provided for payment of his salary at stated times bringing this case within the proviso of the last mentioned statute, as no other inference than that his wages were payable monthly, and not by "cruise" or "voyage," arises from the language of the answer of the appellant.

The judgment of the district court of Honolulu appealed from is affirmed, with costs to the appellee.

A. G. M. ROBERTSON.
E. M. WATSON.
RALPH P. QUARLES.

Thompson, Wilder, Milverton & Lymer, for Plaintiff,
Smith, Warren, Hemenway & Sutton, for Garnishee.

Endorsed: No. 775. Supreme Court Territory of Hawaii. October Term, 1913. J. J. Byrne v. Daniel Kaleiki, Defendant; Inter-Island Steam Navigation Co. Limited, Garnishee. Opinion. Filed June 9, 1914, at 3 P. M. J. A. Thompson, Clerk.

21 In the Supreme Court of the Territory of Hawaii, October Term, 1913.

J. J. BYRNE, Plaintiff,
vs.
DANIEL KALEIKI, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee.

Appeal from District Court of Honolulu.

Judgment.

In the above entitled cause it is hereby ordered and adjudged that the judgment and order of the District Magistrate of Honolulu, dated March 27, 1914, requiring the Garnishee herein to withhold and pay to Plaintiff twenty-five per cent (25%) of all moneys, salary or wages belonging to Defendant herein at the time of service of process, and also twenty-five per cent (25%) of any further salary or wages that may hereafter become due to said Defendant until the judgment dated March 27, 1914, in favor of Plaintiff herein and against said Defendant is fully paid, is affirmed.

Dated at Honolulu this 20th day of July, 1914.

By the Court:

[SEAL.] ROBERT PARKER, JR.,
Assistant Clerk Supreme Court of Hawaii.

Endorsed: No. 775. In the Supreme Court of the Territory of Hawaii. October Term, 1914. J. J. Byrne, plaintiff, vs. Daniel Kaleiki, defendant, Inter-Island Steam Navigation Company, Limited, Garnishee. Judgment. Filed July 20, 1914, at 1:50 P. M. Robert Parker, Jr., assistant clerk. Smith, Warren & Hemenway, Judd Building, attorneys for garnishee.

22 In the Supreme Court of the Territory of Hawaii, October Term, 1913.

J. J. BYRNE, Plaintiff,
vs.
DANIEL KALEIKI, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee.

Appeal from District Court of Honolulu.

Notice of Judgment on Appeal.

To J. M. Monsarrat, District Magistrate of Honolulu, City and County of Honolulu, Territory of Hawaii:

You will take notice that the following judgment has been entered and filed in the above entitled Court and cause:

"In the above entitled cause it is hereby ordered and adjudged that the judgment and order of the District Magistrate of Honolulu, dated March 27, 1914, requiring the Garnishee herein to withhold and pay to Plaintiff twenty-five per cent (25%) of all moneys, salary or wages belonging to Defendant herein at the time of service of process, and also twenty-five per cent (25%) of any further salary or wages that may hereafter become due to said Defendant until the judgment dated March 27, 1914, in favor of Plaintiff herein and against said Defendant is fully paid, is affirmed."

Dated at Honolulu, this 20th day of July, 1914.

By the Court:

[SEAL.] ROBERT PARKER, JR.,
Assistant Clerk.

Endorsed: No. 775. In the District Court of Honolulu, Territory of Hawaii. J. J. Byrne, plaintiff, vs. Daniel Kaleiki, defendant, Inter-Island Steam Navigation Company, Limited, Garnishee. Notice of Judgment on Appeal. Filed July 20, 1914, at 1:50 P. M. Robert Parker, Jr., assistant clerk. Smith, Warren, Hemenway & Sutton, Judd Building, attorneys for Garnishee.

23 In the Supreme Court of the United States.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Corporation (Garnishee), Plaintiff in Error,

vs.

J. J. BYRNE (Plaintiff) and DANIEL KALEIKI (Defendant), Defendants in Error.

Petition for Writ of Error to the Supreme Court of Hawaii.

To the Supreme Court of the United States:

The petition of the Inter-Island Steam Navigation Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, Garnishee in a certain action brought by J. J. Byrne, as Plaintiff, against Daniel Kaleiki, as Defendant, and said Inter-Island Steam Navigation Company, Limited, as Garnishee, in the District Court of Honolulu, City and County of Honolulu, Territory of Hawaii, respectfully shows to this court:

That on the 18th day of March, 1914, said J. J. Byrne instituted an action in assumpsit against Daniel Kaleiki, claiming the sum of Seventy-nine and 13/100 Dollars ($79.13), together with interest and costs and alleging that the Inter-Island Steam Navigation Company, Limited, was the attorney, agent, trustee, factor or debtor of the defendant and as such had goods, wares and merchandise
24 or money in its hands belonging to said defendant.

That thereafter, on said 18th day of March, 1914, summons issued out of said District Court aforesaid requiring said defendant and said garnishee to appear and answer said complaint on the 25th day of March, 1914.

That on the 25th day of March, 1914, the defendant having failed to appear, judgment was rendered against him and in favor of plaintiff for the amount sued for, together with interest, attorneys' commissions and costs of court, in the total sum of Ninety-two and 04/100 Dollars ($92.04).

That on said 25th day of March, 1914, said Inter-Island Steam Navigation Company, Limited, pursuant to the summons aforesaid, appeared and disclosed that the defendant, Daniel Kaleiki, was the second mate of the steamer "Claudine", a vessel employed by the garnishee in trade between ports in the Hawaiian Islands; that said defendant was hired by said garnishee directly and not through a shipping commissioner of the United States; that at the time of service of process said garnishee was indebted to said defendant for three and one-half (3½) days' pay at the rate of Ninety-two Dollars ($92.) per month and that at the date of such disclosure said defendant continued to be in the employ of the garnishee.

That thereupon, having disclosed as aforesaid, said garnishee claimed that, by reason of the provisions of Section 4536 of the

Revised Statutes of the United States, although said defendant was not employed by it through a shipping commissioner of the United States, the salary or wages of said defendant were not subject to attachment or garnishment and said garnishee requested and
25 moved the court to order it discharged as garnishee; that thereupon, upon the date aforesaid, the district magistrate of said District Court of Honolulu denied garnishee's said request and motion and ordered it to retain twenty-five per cent (25%) of the salary or wages then due said defendant, and also twenty-five per cent (25%) of all moneys, salary or wages thereafter becoming due to said defendant and pay the same to the plaintiff, or his attorneys, until the judgment rendered in favor of said plaintiff and against said defendant should be fully paid.

That on the 30th day of March, 1914, said garnishee appealed to the Supreme Court of the Territory of Hawaii from said judgment and order aforesaid and said Supreme Court of the Territory of Hawaii did, on the 20th day of July, 1914, render its judgment affirming the said judgment and order of said District Court of Honolulu.

That the said judgment of said Supreme Court of the Territory of Hawaii, affirming the judgment and order of the District Court of Honolulu aforesaid, was and is a final judgment in the highest court of the Territory of Hawaii in which a decision in said case could or can be had, and that in said final judgment and the proceedings had prior thereto in this case certain errors were committed to the prejudice of your petitioner, all of which will appear more in detail from the assignment of errors which is filed with this petition.

Your petitioner further shows that a Federal question was made in said case, to wit: whether the wages of a seaman employed on board a steamship engaged in trade between ports in the Territory of Hawaii, not shipped by or through a shipping commissioner
26 of the United States, are subject to garnishment or attachment in view of the provisions of Section 4536 of the Revised Statutes of the United States.

Your petitioner further shows that said decision of said Federal question was and is contrary to the meaning and intent of the Revised Statutes of the United States and that your petitioner has been aggrieved thereby.

Wherefore your petitioner desires to avail itself of the law and practice in such cases made and provided by a writ of error from the Supreme Court of the United States and prays that the said writ may be allowed.

Dated at Honolulu, Territory of Hawaii, July 27th, 1914.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED,
By SMITH, WARREN, HEMENWAY & SUTTON,
Its Attorneys.
C. R. HEMENWAY,
Of Counsel.

27 [Endorsed:] No. 775. In the Supreme Court of the United States. Inter-Island Steam Navigation Company, Limited, a corporation, (Garnishee), Plaintiff in Error, vs. J. J. Byrne, (Plaintiff), and Daniel Kaleiki, (Defendant) Defendants in Error. Petition for Writ of Error to the Supreme Court of Hawaii. Filed August 17, 1914, at 10.30 o'clock A. M. as of July 28, 1914. J. A. Thompson, Clerk Supreme Court of Hawaii. Smith, Warren, Hemenway & Sutton, Judd Building, Attorneys for Plaintiff in Error.

28 In the Supreme Court of the United States.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Corporation (Garnishee), Plaintiff in Error,

vs.

J. J. BYRNE (Plaintiff) and DANIEL KALEIKI (Defendant), Defendants in Error.

Assignment of Errors.

Comes now the plaintiff in error in the above entitled cause and avers and shows that in the records and proceedings in the said cause the Supreme Court of the Territory of Hawaii erred to the grievous injury and wrong of the plaintiff herein and against its rights in the following particulars, to wit:

That the Supreme Court of the Territory of Hawaii erred in holding that the wages of a seaman who has not been shipped through a shipping commissioner of the United States, but is directly employed by the owner of a vessel engaged in the merchant trade between ports in this Territory, are subject to garnishment.

That the Supreme Court of the Territory of Hawaii erred in holding that the provisions of the Act of Congress of June 9, 1874, c. 259, 18 Stat. 64, had the effect of amending Act 4536 so that the exemption therein granted should not apply as to seamen on vessels engaged wholly in the coastwise trade.

Dated, Honolulu, July 27th, 1914.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED,
Plaintiff in Error,
By SMITH, WARREN, HEMENWAY & SUTTON,
Its Attorneys.

C. R. HEMENWAY,
Of Counsel.

29 [Endorsed:] No. 775. In the Supreme Court of the United States. Inter-Island Steam Navigation Company, Limited, a corporation, (Garnishee), Plaintiff in Error, vs. J. J. Byrne, (Plaintiff), and Daniel Kaleiki, (Defendant) Defendants in Error. Assignment of Errors. Filed August 17, 1914, at 10:30 o'clock A. M. as of July 28, 1914. J. A. Thompson, Clerk Supreme Court of Hawaii. Smith, Warren, Hemenway & Sutton, Judd Building, Attorneys for Plaintiff in Error.

30 *Writ of Error.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the Territory of Hawaii:

Because in the records and proceedings as also in the rendition of the judgment of a plea which is in the Supreme Court before you or some of you by the Inter-Island Steam Navigation Company, Limited, (Garnishee) Plaintiff in Error, J. J. Byrne (Plaintiff) and Daniel Kaleiki (Defendant), Defendants in error, a manifest error hath happened to the great damage of the said Inter-Island Steam Navigation Company, Limited, Plaintiff in Error, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ so that you have the same in the Supreme Court at Washington within sixty (60) days from the date hereof, that, the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witnesseth the Honorable Edward Douglass White, Chief
31 Justice of the United States the 28th day of July in the year of our Lord one thousand nine hundred and fourteen.

[Seal Supreme Court, Territory of Hawaii.]

J. A. THOMPSON,
Clerk Supreme Court of the Territory of Hawaii.

Allowed by:
A. G. M. ROBERTSON,
Chief Justice of the Supreme Court of the Territory of Hawaii.

[Seal Supreme Court, Territory of Hawaii.]

32 [Endorsed:] No. 775. Filed August 17, 1914 at 10:30 A. M. as of July 28, 1914. J. A. Thompson, clerk Supreme Court of Hawaii. Smith, Warren, Hemenway & Sutton, Judd Building, Attorneys for —— ——.

33 *Citation on Writ of Error.*

THE UNITED STATES OF AMERICA, *ss:*

To J. J. Byrne and Daniel Kaleiki, Greeting:

You are h-reby cited and admonished to be and appear at a Supreme Court of the United States at Washington within sixty (60)

days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the Territory of Hawaii, wherein the Inter-Island Steam Navigation Company, Limited, is Plaintiff in Error and you are Defendants in Error, to show cause, if any there be, why the judgment and order in said record mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable A. G. M. Robertson, Chief Justice of the Supreme Court of the Territory of Hawaii, this 28th day of July in the year of our Lord one thousand nine hundred and fourteen.

A. G. M. ROBERTSON,
Chief Justice of the Supreme Court of the Territory of Hawaii.

[Seal Supreme Court, Territory of Hawaii.]

Service upon us of a copy of the said citation is hereby admitted this 31st day of July, 1914.

J. J. BYRNE.
DANIEL KALEIKI.

34 [Endorsed:] No. 755. Filed August 17, 1914, at 10:30 A. M. as of July 28, 1914. J. A. Thompson, Clerk Supreme Court of Hawaii. Smith, Warren, Hemenway & Sutton, Judd Building, Attorneys for —— ——.

35 Know all men by these Presents: That we, Inter-Island Steam Navigation Company, Limited, a corporation, as Principal, and N. E. Gedge, of Honolulu, Territory of Hawaii, as Surety, are held and firmly bound unto J. J. Byrne, of Honolulu aforesaid, in the full and just sum of Two Hundred and Fifty Dollars ($250.) to be paid to the said J. J. Byrne, his attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 27th day of July, 1914.

Whereas lately at the Supreme Court of the Territory of Hawaii, in a suit pending in said Court wherein J. J. Byrne was Plaintiff, Daniel Kaleiki was Defendant and said Principal was Garnishee, a judgment was rendered affirming the judgment of the District Magistrate of Honolulu in said action, requiring said Garnishee to withhold and pay to said Plaintiff twenty-five per cent (25%) of all salary or wages becoming due to said Defendant until the judgment rendered in said District Court of Honolulu should be fully paid; and the said Principal having obtained a writ of error and filed a copy thereof in the Clerk's Office in said Court to reverse the judgment in the aforesaid action, and a citation directed to the said J. J. Byrne and Daniel Kaleiki, citing and admonishing them to be and appear at a Supreme Court of the United States to be held in Washington within sixty (60) days from the date hereof.

Now the condition of the above obligation is such that
36 if the said Principal, Plaintiff in Error in said proceedings before the Supreme Court of the United States, shall prosecute said writ of error to effect and answer all damages and costs, if it shall fail to make good its plea, then the above obligation to be void, else to remain in full force and effect.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED,
By JAS. M. DEAN, *Vice-President,*
NORMAN E. GEDGE, *Surety.*

[Seal Inter-Island Steam Navigation Company, Limited, Incorporated, Honolulu, T. H., Feb. 19, 1883.]

Approved:
A. G. M. ROBERTSON,
Chief Justice Supreme Court of the Territory of Hawaii.
[SEAL.]

Endorsed: No. 775. Filed August 17, 1914 at 10:30 A. M. as of July 28, 1914. J. A. Thompson clerk Supreme Court of Hawaii. Smith, Warren, Hemenway & Sutton, Judd Building, Tttorneys for —— ——.

37 In the Supreme Court of the Territory of Hawaii, October Term, 1913.

J. J. BYRNE, Plaintiff,
vs.
DANIEL KALEIKI, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Corporation, Garnishee.

Appeal from District Magistrate of Honolulu.

Certificate of Clerk to Transcript of Record.

TERRITORY OF HAWAII,
City and County of Honolulu, ss:

I, James A. Thompson, Clerk of the Supreme Court of the Territory of Hawaii in obedience to the within Writ of Error, the original whereof is herewith returned (being pages 30 to 32 both inclusive) of the foregoing transcript, Do hereby transmit to the Supreme Court of the United States the foregoing transcript (being pages from 1 to 27 both inclusive) and (pages from 35 to 36 both inclusive), and I do hereby certify the same to be full, true and correct transcript of the record and proceedings had in said Supreme Court of the Territory of Hawaii in the above entitled cause, (Numbered 775).

I do further certify that the original Assignment of Errors (being

pages from 28 to 29 both inclusive), and the original Citation on Writ of Error with acknowledgement of service thereof (being pages from 33 to 34 both inclusive) of the foregoing transcript are hereto attached and herewith returned.

In Testimony whereof I have caused the Seal of the Supreme Court of the Territory of Hawaii to be hereto affixed, at Honolulu, City and County of Honolulu, in said Territory, this 19th day of August, 1914.

[Seal Supreme Court, Territory of Hawaii.]

JAMES A. THOMPSON,
Clerk Supreme Court of the Territory of Hawaii.

Endorsed on cover: File No. 24,445. Territory of Hawaii Supreme Court. Term No. 701. Inter-Island Steam Navigation Company, Limited, plaintiff in error, vs. J. J. Byrne and Daniel Kaleiki. Filed November 17th, 1914. File No. 24,445.

Supreme Court of the United States

OCTOBER TERM, 1914

No. 701

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Plaintiff in Error, vs. J. J. BYRNE and DANIEL KALEIKI.	IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This case comes here by writ of error to the Supreme Court of the Territory of Hawaii to review the action of that court in holding that the wages of a seaman engaged in the coastwise trade and not shipped before a shipping commissioner of the United States, were subject to garnishment notwithstanding the provisions of Section 4536 of the Revised Statutes of the United States. This action is the only error assigned.

Briefly stated the facts disclosed in the record are as follows: J. J. Byrne brought suit against Daniel Kaleiki in the District Court of Honolulu, Territory of Hawaii, for the recovery of $79.13 with interest, costs and commissions. The plaintiff in error was alleged to be the employer of the defendant and indebted to him for wages. The defendant having defaulted judgment was entered against him for the

amount claimed. The plaintiff in error disclosed that the defendant was employed by it as mate of the S. S. Claudine at a salary of $92 per month; that the defendant was not shipped through a shipping commissioner of the United States but was hired directly by it, and that the S. S. Claudine was used only in the trade between ports in the various islands in the Territory of Hawaii. The plaintiff in error claimed that under these facts and in view of Section 4536 of the Revised Statutes of the United States, the wages of the defendant were not subject to garnishment. The District Court of Honolulu denied the claim of the plaintiff in error and ordered it to pay to the plaintiff 25 per cent of the wages due and to accrue to the defendant until the judgment should be fully satisfied. From this order the plaintiff in error appealed to the Supreme Court of Hawaii, which Court affirmed the judgment and order appealed from (Tr. pp. 12-15). Thereupon plaintiff in error sued out the present writ of error. The Court's attention is also called to the Hawaiian Statutes relative to garnishment, particularly Sections 2803 and 2804 of the Revised Laws of 1915, which read as follows:

"Sec. 2803. *Amount withheld.* If it shall appear upon the trial of any cause wherein service has been made as provided by law upon any attorney, agent, factor or trustee of a defendant, that such defendant is in receipt of any salary, stipend, wages, annuity or pension from such attorney, agent, factor or trustee, the court before which such trial is had shall order and direct such attorney, agent, factor or trustee not to pay to such defendant or permit or cause to be paid to him more than seventy-five per cent. of such salary, stipend, wages, annuity, or pension, which shall then be or shall thereafter become due, owing or payable to such defendant until the suit against him shall have been finally determined and the final judgment obtained against him, if any, shall have been fully paid with legal interest thereon; *provided*, however, that no more of such salary, stipend, wages, annuity or pension shall be thus withheld from said defendant in advance of final judgment than shall be suf-

ficient to meet the demand of the plaintiff or plaintiffs in such suit or suits together with costs and legal interests."

"Sec. 2804. *Satisfying judgment.* In case there shall be certified to such garnishee a judgment for the plaintiff, from or to which no appeal or execution shall, at the time of its rendition, have been noted it shall be incumbent upon such garnishee to pay to such plaintiff such sum or sums as shall theretofore have been sequestered and not drawn against in pursuance of such suit if such judgment shall equal or exceed such sum or sums. If the amount so sequestered and not drawn against shall not suffice to extinguish such judgment, then such sequestration and delivery to such plaintiff by such garnishee of a sum equal to twenty-five per cent. of such salary, stipend, wages, annuity or pension shall continue from week to week, or from month to month, until such judgment, with legal interest thereon, shall be fully paid, or until such defendant shall quit the service of and dissolve his relation to the garnishee upon which sequestration is founded."

The errors assigned and upon which the plaintiff in error relies are as follows:

"That the Supreme Court of the Territory of Hawaii erred in holding that the wages of a seaman who has not been shipped through a shipping commissioner of the United States, but is directly employed by the owner of a vessel engaged in the merchant trade between ports in this Territory, are subject to garnishment.

"That the Supreme Court of the Territory of Hawaii erred in holding that the provisions of the Act of Congress of June 9, 1874, c. 259, 18 Stat. 64, had the effect of amending Sec. 4536 so that the exemption therein granted should not apply as to seamen on vessels engaged wholly in the coastwise trade. (Tr. p. 19.)"

ARGUMENT.

Section 4536 R. S. exempting seamen's wages from attachment and garnishment was not repealed by the Shipping Commissioners' act (of June 9, 1874) as to seamen engaged in the coastwise trade.

The question presented has not so far been considered by this Court. In the case of *Wilder vs. Inter-Island Steam Navigation Co.*, 211 U. S. 239, this question was mentioned

as not having been argued, or presented by the assignment of errors, and, therefore not decided. Following that decision the question was directly raised in the case of *Schnack vs. Clark*, 21 Haw. 661. There the Supreme Court of Hawaii considered the question fully and concluded that Section 4536 was amended by the Act of June 9, 1874 so as to deprive seamen engaged in the coastwise trade, and not shipped before a shipping commissioner of the United States, of the benefit of the exemption.

In the decision now assigned as error the Court affirms the decision in the previous case of *Schnack vs. Clark* and adds but little to what was there said.

It will be of assistance to quote the material parts of the original act granting the exemption to seamen and the later amendatory act.

Section 4536 provides:

"No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court * * *."

This was Section 61 of the Act of June 7, 1872 entitled "An Act to authorize the appointment of Shipping Commissioners by the several Circuit Courts of the United States, to Superintend the Shipping and Discharge of Seamen engaged in Merchant Ships belonging to the United States and for the Protection of Seamen."

The act of June 9, 1874, Ch. 260, 18 Stat. L. 64, provided "that none of the provisions" of the foregoing act "shall apply to sail or steam vessels engaged in the coastwise trade except the coastwise trade between the Atlantic and Pacific coasts, or in the lake going trade touching at foreign ports or otherwise, or in the trade between the United States and the British North American Possessions, or in any case where the seamen are by custom or agreement entitled to participate in the profits or results of a cruise or voyage."

The purpose of the act of 1874 appears from the decision of this Court in the case of the *United States vs. The Grace Lothrop*, 95 U. S. 527, to have been to make it clear

that another act,—the act of January 15, 1873, applied not merely to the 12th Section of the act of 1872 but the whole act.

Mr. Justice Clifford, who delivered the opinion of the court, said, at page 532:

"Congress, on the 15th of January, 1873, added another proviso to section 12 of the original Act, to the effect that the section shall not apply to masters of vessels when engaged in trade between the United States and the British North American Possessions or the West India Islands or the Republic of Mexico. 17 Stat. at L., 410.

"Explicit as that provision is, it may well be contended that it applies only to the 12th section of the original Act; but Congress, in the month of June, 1874, passed another amendatory Act, by which it is provided that none of the provisions of the original Act shall apply to sail or steam vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific coasts, or in the lake going trade touching at foreign ports or otherwise, or in the trade between the United States and the British North American Possessions, or in any case where the seamen are by custom or agreement entitled to participate in the profits or result of a cruise or voyage. 18 Id., 64.

"Though the Act last referred to is subsequent in date to the supposed wrongful acts of the respondent, as alleged in the libel, yet the language of the Act is in terms an explicit declaration that Congress never intended that the original Act should apply to vessels engaged in any part of the coasting trade, except that between the Atlantic and Pacific coasts."

By the latter part of the above quotation we do not understand that this Court meant that Section 4536 was never intended by Congress to apply to seamen on vessels engaged in the coastwise trade but rather that the numerous provisions of that act relating to the duties of Shipping Commissioners and masters were never intended to apply to the coastwise trade.

This conclusion is not only warranted by this decision but by the wording of the act of 1874.

In the case of *McCarty vs. Steam Propeller City of New Bedford*, 4 Fed. Rep. 618, the question presented was whether the wages earned by a seaman in the coastwise trade were subject to garnishment; the seaman claiming the benefit of Section 4536. Judge Benedict said as follows concerning the act of 1874:

"The provision of the act of June 7, 1872, (now section 4536, Rev. St.,) is as follows: 'No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court.' This provision, of course, ends all controversy if it is applicable to the present case. But the claimants insist that it is inapplicable to the libellants' wages because of the subsequent act of June 9, 1874, (18 St. at Large, 64,) which declares that none of the provisions of the act of June 7, 1872, shall 'apply to sail or steam-vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific coasts.' When it is considered that the well-known mischiefs aimed at by the act of 1874 had no relation whatever to the provision in the act of 1872, reproduced in the section 4536, the language of the act of 1874 affords room to argue that it was not intended to affect the provision of section 4536. Section 4536 declares a privilege in favor of the seamen as against his creditors, and, not being a provision of a character to be applicable to the vessel, may, perhaps, without much difficulty, be held to be unaffected by the act of 1874. Certainly the language of the act of 1874 is ill adapted to convey the idea that it was intended to create a discrimination in the matter of exemption from attachment against seamen who have served in the coastwise trade. No foundation in reason for such a discrimination has been discovered, and it would be unjust. The act of 1874 was, no doubt, passed without reference to its effect upon that provision contained in section 4536. It had an entirely different purpose, and I am by no means certain that it would be going beyond the bounds of proper construction to hold that it has no effect upon the provision of section 4536."

The words in the act of 1874 "none of the provisions * * shall apply to sail or steam vessels engaged in the coastwise trade" are apt in their application to many of the sections in

the act of 1872, as, for example, Sections 4511 to 4519, inclusive. These words are not such as would be expected if Section 4536 was intended to be referred to, for there is nothing in that Section which applies to vessels or the duties of masters and owners under the Shipping Commissioners' act. As we view it, Section 4536 remained unaffected by the act of 1874, neither specifically nor by reasonable implication repealed as to seamen in the coastwise trade.

The Supreme Court of Hawaii states that in its opinion much force is added to their view that Section 4536 was amended by the act of 1874, by subsequent legislation referring particularly to Section 2 of the act of June 19, 1886; and the act of August 19, 1890, as amended. The latter act provides that when a crew is shipped by a shipping commissioner in the coastwise trade, an agreement shall be made with each member of the crew in accordance with certain sections of the Revised Statutes, and such seamen shall be discharged and receive their wages as provided by certain designated sections, among these being Section 4536. To a certain extent, the mention of Section 4536 in this connection does make it appear that Congress might have considered that Section 4536 had been amended so that it did not refer to seamen in the coastwise trade, but we submit that an act passed in 1890 shauld have no weight whatever in determining the intent of Congress in passing an act sixteen years before.

If the act of 1874 had the effect attributed to it by the Supreme Court of Hawaii, one result would be that the wages of seamen engaged in the coastwise trade would or would not be exempt from attachment according to whether the master or owner of the vessel on which they were engaged shipped them before a Shipping Commissioner. The seamen themselves would have no means of protecting themselves, for the act of June 19, 1886, leaves it optional with the ship's master or owner whether the crew shall be shipped before a shipping commissioner, and the act of August 19, 1890, confers the benefits of Section 4536 only in cases where the sea-

men are shipped before a Shipping Commissioner. In other words, seamen on one vessel would have the exemption while seamen on another vessel engaged in precisely the same trade would not. It is unreasonable to suppose that Congress ever intended that such an unjust and arbitrary discrimination should be made.

Since this writ of error was issued Congress has made further enactments relative to seamen,—Public Act No. 302, approved March 4, 1915. By Section 12 of this act the original provision found in Section 61 of the act of 1872 is re-enacted, and Section 4536 of the Revised Statutes is repealed.

Congress has now made it beyond question that the wages of all seamen, whether engaged in the coastwise trade or otherwise, shall be exempt from attachment, as soon as the law goes into effect. Consequently, as far as the present case is concerned, no wages accruing to the defendant Kaleiki will be subject to garnishment or attachment after November 4, 1915.

In view of the foregoing, we respectfully submit that the Supreme Court of Hawaii erred in holding that the wages of the defendant were subject to garnishment and the judgment should be reversed.

Although a comparative small sum of money is involved in the present case, a number of other cases involving in the agregate a considerable sum of money are dependant upon the decision of this case, and hence a decision is necessary, even in view of the Act of March 4, 1915.

Honolulu, September 15, 1915.

Respectfully submitted,

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Charles R. Hemenway
Of Counsel.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1914.

NO. 288

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Plaintiff-in-Error.

vs.

J. J. BYRNE and DANIEL KALEIKI

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

BRIEF OF DEFENDANT-IN-ERROR, J. J. BYRNE

THOMPSON, MILVERTON & CATHCART
Attorneys for Defendant-in-Error, J. J. BYRNE.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1914.

NO. 701.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Plaintiff-in-Error. vs. J. J. BYRNE and DANIEL KALEIKI	IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

BRIEF OF DEFENDANT-IN-ERROR, J. J. BYRNE

STATEMENT.

The statement of the case contained in the brief for plaintiff-in-error is full and correct. The only question involved is whether on the 25th day of March, 1914, the date of the rendition of the judgment in the District Court of Honolulu, Territory of Hawaii, the wages of a seaman who had not shipped through a shipping commissioner but had been directly employed by the owner of a vessel engaged in the merchant trade between ports of the Territory of Hawaii, were subject to garnishment.

ARGUMENT.

The plaintiff-in-error, Inter-Island Steam Navigation Company, Limited, garnishee in the court below, relies upon the provisions of section 4536 of the Revised Statutes of the United States, that "No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court."

The contention of the defendant-in-error is that this case is controlled by the Act of Congress of June 9, 1874, and later federal legislation. The Act of June 9, 1874, provided that

> "None of the provisions of an act entitled 'An Act to authorize the appointment of shipping commissioners by the several circuit courts of the United States to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen,' shall apply to sail or steam vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific Coasts," etc. (18 Stat. L. 65).

The Act, the title of which was quoted in the later act, as above shown, was passed by Congress on June 7, 1872, (17 Stat. L. 262) and was carried into the Revised Statutes of 1874 which were enacted on June 22, 1874. Section 5601 of the Revised Statutes however, provided as follows:

> "The enactment of said revision is not to affect or repeal any act of Congress passed since the 1st day of December one thousand eight hundred and seventy-three, and all acts passed since that date are to have full effect as if passed after the enactment of this revision, and so far as such acts vary from, or conflict with any provision contained in said revision, they are to have effect as subsequent statutes, and as repealing any portion of the revision inconsistent therewith."

It is clear then that the act of June 9, 1874, was not deprived of any force by reason of the enactment of Section 4536 of the Revised Statutes. On the contrary, it seems reasonably clear that that section must be taken to have been amended by the sweeping provision of the act of June 9, 1874, which evidently was intended to take out of the operation

of the shipping commissioners' act vessels and seamen engaged in the coastwise trade other than that between the Atlantic and Pacific coasts.

Subsequent federal legislation adds force to this contention as shown by section 2 of an act approved on June 19, 1886, (24 Stat. L. 79), an act approved August 19, 1890 (26 Stat. L. 320) as amended by an act of February 18, 1895 (28 Stat. L. 667), and an act of March 3, 1897 (29 Stat. L. 689).

Construing the provisions of the statute of June 9, 1874, the court in *United States v. The Grace Lothrop, 95 U. S. 527, 532* said that the language of the act was in terms an explicit declaration that Congress never intended that the original act should apply to vessels engaged in any part of the coasting trade, except that between the Atlantic and Pacific coasts.

In *United States v. Bain, 5 Fed. 192, 195*, construing the same statute, the court said:

> "This language is so broad and comprehensive that, in our opinion, its effect must be to strike from the Revised Statutes every provision therein which was taken from the act of 1872 relative to such coastwise vessels; and their operation must be restricted to vessels sailing on long foreign voyages or from the Atlantic to the Pacific coasts."

See also *Ross v. Bourne, 14 Fed. 858, 859.*

The Supreme Court of the State of Massachusetts, in discussing the same question in *Eddy v. O'Hara, 132 Mass. 56, 60* said that coasting voyages, except as specified, would seem to be taken wholly out of the provisions of the act of 1872.

In another Massachusetts case, that of *White v. Dunn, 134 Mass. 271*, it was held that seamen's wages were not exempt from attachment except by statute and that wages due a seaman on a coasting

voyage between ports on the Atlantic coast were subject to attachment.

The Hawaiian case of *Schnack v. Clark, 21 Haw. 661* contains a careful review by the Chief Justice of the Supreme Court of the Territory of Hawaii of the Statutes involved and the decisions on the subject. This case and its reasoning is relied on by the defendant-in-error and has been freely quoted from in this brief. The defendant-in-error also relies on the able opinion, and the authorities cited therein, by the Supreme Court of the Territory of Hawaii in the case at bar, such opinion being reported in 22 Haw. page 60, and being found on pages 12 to 15 of the Transcript of Record in this case.

There was therefore, no error committed by the District Court of Honolulu, Territory of Hawaii, in holding that the wages of the defendant in this case, Daniel Kaleiki, were subject to garnishment.

Respectfully submitted,

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By

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Per F. W. M. and

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Honolulu, October 25th, A. D. 1915.